

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR434
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
ELMEREJILDO GRAVIEL-PEREZ,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 41, 42). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement states that, aside from an enhancement under U.S.S.G. § 2L1.1(b)(2)(A), "no other adverse level adjustments shall apply." (Filing No. 233, ¶ 6.) The PSR includes an enhancement under U.S.S.G. § 2L1.1(b)(6) (substantial risk of death or serious bodily injury to another). Both parties object to this enhancement as outside the plea agreement. The Court's tentative finding is that the plea agreement shall be upheld and the enhancement under § 2L1.1(b)(6) in ¶ 19 does not apply.

IT IS ORDERED:

1. The parties' objections to the Presentence Investigation Report (Filing Nos. 41, 42) are granted;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 24th day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge